

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

April 6, 2000

Opinion No. 00-067

Expanding a Utility District

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**QUESTION**

Under Tenn. Code Ann. § 7-82-201 and Tenn. Code Ann. § 7-82-202, the petition for the creation of a new utility district must be submitted to the Utility Management Review Board before it is submitted to the county executive of the county where the new district is to be incorporated. Must a request to amend the service area of an existing utility district also be submitted to the Utility Management Review Board before it is submitted to the county executive?

**OPINION**

No, this requirement generally applies only to the creation of an entirely new utility district, not to the modification or reincorporation of an existing utility district.

**ANALYSIS**

This opinion concerns the process for amending the charter of an existing utility district to modify its service area. Utility districts whose service area lies within a single county are incorporated under Tenn. Code Ann. §§ 7-82-201, *et seq.* Under Tenn. Code Ann. § 7-82-201, a petition for the incorporation of a utility district must be submitted to the Utility Management Review Board, as well as the county executive of any county in which the proposed district is situated. Under Tenn. Code Ann. § 7-82-202(a), the Utility Management Review Board forwards its comments and the petition to the county executive of any county in which the proposed district serves. The county executive must hold a hearing on the convenience and necessity of the incorporation of the district. The county executive must read the Utility Management Review Board's comments at the public hearing and make copies available if requested by those in attendance. The question is whether a petition to amend the service area of an existing utility district must also be submitted to the Utility Management Review Board as well as the county executive, to be acted on by the county executive only after receiving the Board's comments.

This opinion assumes that the question refers only to a single existing utility district that wishes to expand its service area, not to a merger of utility districts or an arrangement where two utility districts agree to the expansion of one and the contraction of another within their service areas. Under Tenn. Code Ann. § 7-82-301(a)(1), once a utility district has been incorporated, it becomes the sole public corporation empowered to furnish the services listed in its charter in the service area,

“...and no other person, firm or corporation shall furnish or attempt to furnish any of the services in the area embraced by the district, unless and until it has been established that the public convenience and necessity requires other or additional services[.]” Tenn. Code Ann. § 7-82-301(a)(1). This limitation does not apply to territory annexed by a city under Tenn. Code Ann. §§ 6-51-101, *et seq.* *Id.*

The statutes on the creation of a utility district nowhere expressly provide a general means by which a utility district may amend its charter to expand its territory. But courts have concluded that the exclusive franchise area of a utility district can only be modified by the county executive for the county in which the petition for incorporation was presented and granted. *City of Crossville v. Middle Tennessee Utility District*, 208 Tenn. 268, 345 S.W.2d 865, 867 (1961); *White House Gas Utility District v. Cross Plains Natural Gas Utility District*, 60 Tenn. App. 162, 445 S.W.2d 459 (1969). While the statutes do not describe the requirements for modifying the territory of a utility district, we think the General Assembly intended to limit the requirement that a petition be submitted to the Utility Management Review Board to petitions for the incorporation of an entirely new utility district, not to requests to amend or modify the charter of an existing district. This conclusion is based on the act that amended the Utility District Law to add review by the Utility Management Review Board to the incorporation process. 1995 Tenn. Pub. Acts Ch. 64. Section 10 of that act provides:

This act shall not apply to any utility district that must, for the purpose of redefining its incorporated boundary, be recreated in accordance with existing law.

We think it can be reasonably inferred from this provision that the General Assembly did not intend review by the Utility Management Review Board to apply where an existing utility district, either by amending its charter or by reincorporating, wishes to change its service area.

This Office recently concluded that where a single-county utility district wishes to modify and expand its exclusive service area into an adjacent county, it must incorporate as a multi-county utility district under Tenn. Code Ann. §§ 7-82-601 to -609. Op. Tenn. Atty. Gen. 00-003 (January 6, 2000). That statutory scheme does not include review of the incorporating petition by the Utility Management Review Board. In any case, under Section 10 quoted above, we do not think the General Assembly intended review by the Utility Management Review Board to be part of that process.

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